

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CHRISTOPHER MANNARINO,)	CASE NO. 1:15 CV 117
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	<u>ORDER ADOPTING</u>
)	<u>MAGISTRATE'S REPORT AND</u>
)	<u>RECOMMENDATION</u>
BENNIE KELLY, Warden,)	
)	
)	
Respondent.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr.. The Report and Recommendation (ECF # 9), issued on April 13, 2015, is hereby ADOPTED by this Court. Petitioner filed this action requesting a writ of habeus corpus pursuant to 28 U.S.C. §2254, challenging the constitutionality of his judgments of conviction for pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, and possession of criminal tools. (ECF #1). The Respondent filed a motion to dismiss the petition, for failure to exhaust all of the stated claims. (ECF #7). Petitioner responded to the motion to dismiss, conceding that part of his second claim for relief (ineffective assistance of trial counsel for failure to indicate on the record that Petitioner was promised favorable

consideration and a lesser sentence in exchange for his guilty plea) was not exhausted and agreeing to delete it, but opposing dismissal of the entire petition. (ECF #8).

The Magistrate Judge recommends that Petitioner's the unexhausted portion of petitioner's second claim be deleted (i.e. dismissed without prejudice), but that Respondent's Motion to Dismiss the entire petition be denied. Neither party has not filed any objections to the Magistrate's Report and Recommendation.

The Court has reviewed *de novo* the Report and Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS the Report and Recommendation in its entirety. The Respondent's Motion to Dismiss is, therefore, denied. (ECF #7). Further, the Petitioner's claim for ineffective assistance of trial counsel on the grounds set forth above, is dismissed without prejudice with the consent of both parties, based on failure to exhaust. IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: May 12, 2015